

the United States marshal of the product in the event, after delivery of the product to the claimant, of nonpayment of the costs of the proceedings and nonexecution of a bond in the sum of \$3,000, in conformity with section 10 of the act, by the claimant.

C. F. MARVIN, *Acting Secretary of Agriculture.*

7690. Adulteration and misbranding of concentrated tomato. U. S. * * * v. 182 Cases * * * and 63 Cases * * * of Concentrato Di Pomodoro * * * Concentrated Tomato Serto Brand Packed by Serto Packing Co. N. Y. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. Nos. 9397, 9398. I. S. Nos. 14252-r, 14253-r. S. Nos. E-1137, E-1138.)

On October 22, 1918, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 182 cases, each containing 200 cans, and 63 cases, each containing 100 cans, of a product, labeled "Concentrato Di Pomodoro Concentrated Tomato Serto Brand," remaining unsold in the original unbroken packages at New York, N. Y., alleging that the article had been shipped on or about September 10, 1918, by the Serto Packing Co., Centreville, Md., and transported from the State of Maryland into the State of New York, and alleging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it being an article of food, the article consisted in part of a filthy and decomposed vegetable substance, and it was further adulterated in that starch had been mixed with, and substituted wholly or in part for, the article which it purported to be.

Misbranding of the article was alleged in the libel for the reason that it was an imitation of, and offered for sale under the distinctive name of, another article.

On April 22, 1920, Scaramelli & Co., Inc., claimant, consented to the entry of a decree of condemnation and forfeiture, and attachment and destruction by the United States marshal of the product in the event, after delivery of the product to the claimant, of nonpayment of the costs of the proceedings and nonexecution of a bond in the sum of \$3,000, in conformity with section 10 of the act, by the claimant.

C. F. MARVIN, *Acting Secretary of Agriculture.*

7691. Adulteration and misbranding of oil of sweet birch and oil of gaultheria. U. S. * * * v. 2 Cans * * * of Oil of Sweet Birch and 3 Cans * * * of Oil of Gaultheria. Decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 11651. I. S. Nos. 534-r, 535-r, 536-r. S. Nos. E-1872, E-1873, E-1874.)

On December 9, 1919, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 cans, each containing 60 pounds of a product purporting to be oil of sweet birch, and 3 cans, each containing 30 pounds of a product purporting to be oil of gaultheria, consigned November 12, November 13, and November 20, 1919, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the article had been shipped by T. J. Ray, Johnson City, Tenn., and transported from the State of Tennessee into the State of New York, and charging adulteration and misbranding in violation of the Food and Drugs Act. The alleged birch oil was labeled in part, "Oil Sweet

Birch U. S. P." The alleged oil of gaultheria was invoiced as "Wintergreen Leaf Oil (Gaultheria)."

Analyses of samples of the articles by the Bureau of Chemistry of this department showed them to contain synthetic methyl salicylate.

Adulteration of the articles, considered as drugs, was alleged in the libel for the reason that they were sold under names recognized in the United States Pharmacopœia and differed from the Pharmacopœial standard of strength, quality, and purity as therein laid down, and further in that their own strength and purity fell below the professed standard or quality under which they were sold. Adulteration of the articles, considered as foods, was alleged for the reason that synthetic methyl salicylate had been mixed and packed therewith so as to reduce, lower, and injuriously affect their quality and strength, and had been substituted wholly or in part for said products.

Misbranding of the article purporting to be oil of gaultheria and invoiced as "Wintergreen Leaf Oil (Gaultheria)" was alleged for the reason that said product was represented as being derived solely from wintergreen leaves, which was false and misleading when applied to a product consisting in part of synthetic methyl salicylate. Misbranding of this product, considered as a drug, was alleged for the reason that it was an imitation of, and offered for sale under the [distinctive] name of, another article, to wit, oil of gaultheria. Misbranding of the article, considered as a food, was alleged for the further reason that it was an imitation of, and offered for sale under the distinctive name of, another article, to wit, oil of gaultheria. Misbranding of the product labeled "Oil Sweet Birch," considered as a drug, was alleged in the libel for the reason that it was an imitation of, and offered for sale under the name of, another article, to wit, oil sweet birch. Misbranding of the article, considered as a food, was alleged for the reason that it was an imitation of, and offered for sale under the distinctive name of, another article, and for the further reason that the packages containing the product bore a statement, to wit, "Oil Sweet Birch," regarding the product contained therein, which said statement was false and misleading—false in that the article was not composed wholly of oil of sweet birch, but on the contrary consisted partly of synthetic methyl salicylate derived from sources other than sweet birch, and misleading in that it led the purchaser to believe that said product was composed wholly of oil of sweet birch, whereas it consisted in part of synthetic methyl salicylate derived from a source other than sweet birch.

On December 23, 1919, the said T. J. Ray, Newland, N. C., filed his claim for the product and also a stipulation for costs. Thereafter said claimant by his attorney filed a motion for the release of the product under bond. On February 27, 1920, the matter having come on for the disposition of said motion, after arguments by counsel, the matter was taken under advisement and on March 10, 1920, said motion was denied as will more fully appear from the following decision by the court (Hand, D. J.):

The claimant transported in interstate commerce the above-named merchandise which was misbranded. The articles seized had a much lower market value than the articles which the false labels described. They were branded as oil of birch and wintergreen, which are used in the manufacture of confectionery. The imitation so branded contained but a small percentage of the ingredients and consisted mainly of a chemical of different composition.

The claimant asks to be allowed to furnish a bond and to have the merchandise released so that he can sell it by correct description. It is not denied that the merchandise is not deleterious. The release of these articles after bond is in my opinion discretionary with the court. Section 10 of the Food and Drugs Act provides that any article of food that is adulterated or mis-

branded and is a subject of Interstate Commerce "shall be liable to be proceeded against in any district court of the United States within the district where the same is found and seized for confiscation by a process of libel for condemnation."

There follows in a subsequent clause in section 10 supra, a provision empowering "the court by order (to) direct that such articles may be delivered to the owner thereof."

This is not mandatory but clearly permissive. The claimant here has been convicted of a similar offense before and has numerous other proceedings pending against him. I regard the application as addressed wholly to my discretion and I decline to exercise it in favor of the claimant under existing circumstances. The misbranding was fraudulent and injurious to competitions in the trade.

The motion to release on bond is denied.

On May 1, 1920, said claimant having failed to file an answer to the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the products be sold by the United States marshal after the same had been relabeled as "Imitation of Oil of Sweet Birch," and "Imitation of Oil of Gaultheria," respectively, and that the costs of the proceedings be recovered from said claimant.

C. F. MARVIN, *Acting Secretary of Agriculture.*

7692. Adulteration and misbranding of oats. U. S. * * * v. Armour Grain Co., a Corporation. Plea of guilty. Fine, \$1,050 and costs.
(F. & D No. 6871. I. S. Nos. 586-k, 587-k, 589-k, 594-k, 597-k, 598-k, 599-k, 478-k, 480-k, 484-k, 485-k, 487-k, 488-k, 489-k, 26-k, 27-k, 28-k, 29-k, 3001-k, 3005-k, 1151-k, 1152-k, 1153-k, 1154-k, 1155-k, 1156-k, 1158-k, 1159-k, 1160-k, 1161-k, 1163-k, 1164-k, 1165-k, 1175-k, 1176-k)

On March 29, 1917, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in 105 counts against the Armour Grain Co., a corporation doing business at Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on December 4, 1914, December 5, 1914, December 15, 1914, December 16, 1914, December 18, 1914, December 24, 1914, December 30, 1914, December 31, 1914, January 4, 1915, January 5, 1915, and January 7, 1915, from the State of Illinois into the State of Maryland, of quantities of oats which were adulterated and misbranded.

Examination of samples of the article by the Bureau of Chemistry of this department showed the presence of varying quantities of oats, barley, dirt, chaff, etc.

Adulteration of the article in each shipment was alleged in the information for the reason that certain substances, to wit, feed barley, weed seeds, screenings, dust, and oat hulls, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for oats, which the article purported to be.

Misbranding of the article was alleged for the reason that it consisted of, to wit, a mixture of oats, feed barley, weed seeds, screenings, dust, and oat hulls, and was offered for sale under the distinctive name of another article, to wit, oats.

On May 29, 1920, a plea of guilty was entered on behalf of the defendant company, and the court imposed a fine of \$1,050 and costs.

C. F. MARVIN, *Acting Secretary of Agriculture.*